

1 ***Californians for Renewable Energy, Inc.(CARE)***

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5 **STATE OF CALIFORNIA**

6 Energy Resources Conservation
7 and Development Commission

8
9 In the Matter of:)
10) Docket No. 01-SIT-1
11 RULEMAKING TO MODIFY)
12 RULES OF PRACTICE AND) SITING COMMITTEE
13 PROCEDURE FOR POWERPLANT) WORKSHOP TO DISCUSS INITIAL
14 APPLICATIONS) DRAFT REGULATIONS
15 _____)
16
17
18

19 **Comments on the Initial Draft Modifications to the Siting Regulation**

20
21 CARE, ITS MEMBERS AND THE REST OF THE PUBLIC ACTUALLY OR
22 POTENTIALLY INTERESTED CONTINUE TO BE DENIED A FAIR AND REASONABLE
23 OPPORTUNITY TO PARTICIPATE IN THE ADMINISTRATIVE AND ENVIRONMENTAL
24 REVIEW PROCESS BEING IMPOSED BY THE CEC, ITS REGULATIONS, THE
25 INTERPRETATION, MODIFICATION AND APPLICATION OF THOSE REGULATIONS,
26 AND ITS AGENTS.
27

28 COMMISSIONER LAURIE'S PROPOSED MODIFICATIONS TO THE SITING
29 REGULATIONS FURTHER COMPOUND THESE PROBLEMS BASED ON A
30 PRESUMPTION THAT THE PUBLIC'S PARTICIPATION IS NOT MEANINGFULL OR
31 EVEN NECESSARY.
32

33 FUTILE AS IT MAY HAVE BECOME, CARE CONTINUES TO RESPECTFULLY
34 DEMAND IMMEDIATE ATTENTION BE FOCUSED ON THE PUBLIC PARTICIPATION
35 PROBLEMS RAISED ON INNUMERABLE OCCASIONS IN THE PAST. CARE
36 CONTINUES TO RESPECTFULLY DEMAND THAT IMMEDIATE, EFFECTIVE ACTION
37 BE TAKEN TO REMEDY THE ONGOING PUBLIC PARTICIPATION VIOLATIONS.

1
2 THE PUBLIC PARTICIPATION PROBLEMS HAVE RESULTED AND ARE
3 RESULTING IN THE DENIAL OF OUR CONSTITUTIONAL RIGHTS, INCLUDING THE
4 DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS WELL
5 AS THE RIGHTS TO SPEAK, ASSOCIATE, VOTE, HAVE ACCESS TO THE COURTS,
6 PARTICIPATE IN THE POLITICAL PROCESS, HAVE BENEFIT FROM STATUTORY
7 PROVISIONS SO INTENDED, AND A VAST MULTITUDE OF OTHER
8 TRANSGRESSIONS OF THE HIGHEST ORDER IN A CONSTITUTIONAL
9 DEMOCRACY BASED ON THE SEPARATION OF POWERS SUCH AS OURS.
10

11 Commissioner Laurie's proposed change to the notice requirement is in conflict
12 with Cal Government Code § 11125(a). The proposed modification is as follows:
13

14 "Section 1710 Noticing Procedures; Setting of Hearings, Presentations,
15 Conferences, Meetings, Workshops, and Site Visits.

16 (h) Nothing in this section shall prohibit ~~an applicant from informally~~
17 ~~exchanging information or discussing procedural issues with the staff~~ any
18 party from meeting with any other party for the purpose of discussing any
19 matter related to the project without a publicly noticed workshop provided
20 that when a party meets with staff to conduct such discussions, staff shall
21 make a written record of the content of the discussions and shall place that
22 writing in the docket and serve it on all parties to the proceeding."
23

24 CARE contends that the proposed modification to the siting regulations fail to
25 meet the notice requirements of the Bagley-Keene Open Meeting Act. CARE seeks the
26 notice of said "meeting[s] with any other party for the purpose of discussing any matter
27 related to the project" in accordance with the Act, to provide the public an opportunity for
28 meaningful and informed public participation in accordance with the First Amendment
29 constitutional rights enjoyed by citizens of the United States.
30

31 CARE is very concerned about this continuing and gradually worsening
32 trend of sacrificing the public participation and other aspects of environmental protection
33 mandated by CEQA or other schemes in favor of expediting as much as possible the

1 siting, construction and operation of powerplants. An example of this is Commissioner
2 Laurie's proposed modifications to the siting regulations which further limit or eliminate
3 Intervenor and other members of the abilities to present evidence and cross-examine
4 witnesses.

5
6 "Section 1212. Rules of Evidence and Hearing Procedures

7 The following rules of evidence and hearing procedures shall apply to any
8 adjudicatory proceeding of the commission and in such other proceedings
9 as the commission may determine by order.

10 (a) The hearing need not be conducted according to technical rules relating
11 to evidence and witnesses. Any relevant non-cumulative evidence shall be
12 admitted if it is the sort of evidence on which responsible persons are
13 accustomed to rely in the conduct of serious affairs.

14 (b) ~~Oral or written~~ All testimony offered by any party shall be under oath. The
15 presiding member may encourage or require parties to present their
16 testimony in written form in advance of the hearings so that hearings may be
17 efficiently conducted. The presiding member may restrict the use of oral
18 testimony and cross-examination when written testimony indicates that there
19 are no genuine disputes of material facts and when the presiding member
20 determines that oral testimony or cross-examination would not materially
21 assist the commission in reaching an informed decision.

22 (c) ~~Each~~ Subject to the presiding member's exercise of discretion in the
23 conduct of an efficient hearing process, each party shall have the right to ~~call~~
24 ~~and examine~~ present the testimony of witnesses, to introduce exhibits, to
25 cross-examine opposing witnesses on any matters relevant to the issues in
26 the proceeding, and to rebut evidence against such party.

27 (d) Hearsay evidence may be used for the purpose of supplementing or
28 explaining other evidence but shall not be sufficient in itself to support a
29 finding unless it would be admissible over objections in civil actions.

30 (e) The presiding member may use the informal hearing procedures set forth
31 in Government Code sections 11445.10 et seq to enhance the ability of
32 parties to present information efficiently and effectively.

33
34 Section 3 – Section 1712 shall be amended to read:

35 Section 1712 Right to Become a party; rights and Duties.

36 (b) Each ~~intervenor~~ party shall have the right to present witnesses, to submit
37 testimony and other evidence, to cross-examine other witnesses, to obtain
38 information pursuant to Section 1716, and to file motions, petitions,
39 objections, briefs, and other documents relevant to the proceeding as
40 provided for in Section 1212. Each party shall be provided with a copy of the
41 notice or application."
42

1 With all due respect, our understanding is that it is you as the administrative
2 agency, and not CARE or other members of the public, that are responsible to conduct a
3 full and fair investigation of matters as to which you have been put on notice by the
4 submission of objectively-based, reasonably credible information, such as the information
5 we have been providing you. It is our further understanding that the information we provide
6 you with need not rise to the technical legal level of "substantial evidence" in order to
7 trigger your duty to investigate.

8
9 CARE notes that its inability to have information considered by the Commission
10 because of artificial and unnecessary barriers imposed by the existing process has
11 resulted in three US EPA Environmental Appeal Board appeals, two US EPA Office of
12 Civil Rights complaints, and a CEQA law suit in Riverside County over the Blythe Energy
13 Project. Commissioner Laurie's proposed modification to the siting regulation will only
14 serve to exacerbate these problems, not correct them, which results in substantial delay,
15 and cost for the Commission, the Applicant, Intervenors, and the public.

16
17 CARE continues to object to the energy Commission's claim, that the CEC can
18 determine the "evidence" upon which decisions are made, including decisions on the
19 exercise of the override power, and although by allowing information and evidence
20 submitted by the public to be placed in the project's "docket," the CEC has the discretion
21 to reject and exclude such information. Additionally evidence from the "administrative
22 record" can be rejected or excluded even if the matter being rejected/excluded is relevant
23 to the project under review. This claim is completely improper and contrary to law. The
24 CEC has no such power or authority. The specific contents of the administrative record
25 are specified and codified by CEQA. (Section 21167.6 of the Public Resources Code.)
26 And the CEC may not adopt policies, rules, programs, procedural devices or other
27 means of circumventing that definition. This is precisely what Commissioner Laurie's
28 proposed revisions to the siting regulations are attempting to do. Please recall that the
29 CEC's regulations and procedural devices must be equivalent to CEQA's. This is what
30 the Legislature specified when it refused to give CEC review full exemption, choosing

1 instead to give the CEC process a very limited exemption subject to the CEQA
2 equivalency requirement.

3
4 We believe the Commission has become and is becoming particularly susceptible
5 to the tremendous pressures being exerted by sources as imposing as our president, our
6 governor, and members of the state (as well as federal) legislature, who are crying out for
7 an expedited review process in large part because the siting/construction/operation of
8 new powerplants is perceived as the primary measure for ending the energy crisis, and
9 specifically the rolling blackouts that are resulting and will most probably continue to result
10 from the crisis.

11
12 Our position is this. The energy crisis may have reached emergency
13 proportions. If so, it may be perfectly necessary & appropriate for the Commission to
14 forego, in whole or in part, public participation, environmental protection or other delays in
15 favor of an expedited review process that accomplishes the goal of getting as many
16 powerplants on line as quickly as possible.

17
18 The upshot of all this is, as CARE has pointed out before and will
19 undoubtedly point out in the future, the Commission lacks the authority--the discretion or
20 the jurisdiction, whatever you want to call it--to preclude or pare down public participation
21 and environmental protection in the manner being touted by the previously mentioned
22 highly powerful and persuasive sources stridently advocating these very things, and, we
23 are afraid, in the manner the Commission is doing apparent response to the pressure.

24
25 What the Commission is being pressured to do, and what it has done and
26 is doing, is to continue perpetrating what is in essence a fraud on the people of this state
27 and this nation. The Commission is being asked to continue giving the essentially false
28 impression that the environmental protection mandated by CEQA, public participation
29 rights mandated by the Bagley-Keene Act, and other statutes are being maintained, while

1 the process of getting & keeping more powerplants on line to end the energy crisis as
2 soon as possible is being implemented. As you well know, this is simply not true.

3
4 The public simply may not be deprived of the opportunity to participate in the
5 process adopting and implementing and substantially amending these statutory schemes.
6 If that is going to occur, it will have to be done by undergoing a complete legislative
7 process which includes evidentiary public hearings before legislative committees and
8 subcommittees exploring all aspects of the emergency energy crisis conditions
9 purportedly justifying the full exemption. CARE is informed and believes these legislative
10 processes may very well show that the mad, blind rush to get new powerplants on line at
11 all costs (particularly protection of the environment, human health & safety and economic
12 well being) is not as essential and may not provide the immense benefits attributed to that
13 energy crisis solution.

14
15 CARE and other members of the public should not be admonished, looked down
16 upon or discriminated against merely because of our lack of money to hire an attorney to
17 fully represent us in siting cases. The lack of money with which to hire trustworthy
18 scientific as well as legal experts to review and if necessary challenge the work done by
19 Commission's staff experts is precisely why the public's right of participation is being
20 denied during the administrative proceedings. Blaming CARE or other members of the
21 public for this unfortunate situation is completely unfair. Depriving, impermissibly
22 impeding or failing to adequately encourage and ensure the kind of well informed and
23 meaningful public participation strongly required by CEQA, the Bagley-Keene Act, and
24 LORS violates the primary purposes of the Commissions existence, and will certainly
25 result in additional delay and cost resulting from continued administrative and legal
26 challenges by CARE, other Intervenors, and members of the public.

27
28 Respectfully Submitted,

29 *Michael E. Boyd*

1 Michael E. Boyd - President, CARE

2 7-17-01

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